

REMARKS

Reconsideration of the rejections set forth in the Office Action mailed August 19, 2004, is respectfully requested. Claim 10 has been amended to further clarify the invention without narrowing the scope of the claim. Support for these amendments can be found in the specification at, e.g., Figs. 1A-C and page 4, lines 1-18. Claims 1-20 remain pending in this application.

Art Rejections

Claims 1-2, 4-5, 7, 10-11, 13-14, 16, and 19-20 were rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Macoviak et al. (USP 6,139,517). Claims 3, 6, 12, and 15, were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Macoviak et al. and further in view of Don Michael (USP 5,176,638). Claims 8 and 17 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Macoviak et al. and further in view of Aillon (USP 4,601,706). Claims 9 and 18 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Macoviak et al. and further in view of Avellanet (USP 5,613,948).

Applicant respectfully asserts that Macoviak does not teach or suggest a device or method containing all of the limitations of the pending claims. Independent claim 1 requires an aortic shunt with “*the distal end of the second tubular member communicating with a port mounted on an intermediate portion of the first tubular member, the port adapted to communicate with the carotid arteries when in use.*” (emphasis added). The method of independent claim 10 requires “*providing an aortic shunt with the distal end of the second tubular member communicating with a port mounted on an intermediate portion of the first tubular member*” (emphasis added) and “*infusing oxygenated blood through the lumen of the*

second tubular member through the port of the first tubular member into the carotid arteries.”

The examiner states that “Macoviak discloses an aortic shunt having first tubular member with expanding cylindrical balloon 244 engaging the lumen of the aorta” Toroidal balloon 244 is the only expandable member of the aortic shunt pictured in Figs. 9A and B. Therefore, the distal end of the second tubular member 252 does not communicate with a port mounted on an intermediate portion of the first tubular member (toroidal balloon 244) because port 248, the only part mounted on the first tubular member, does not communicate with the carotid arteries when in use.

Claims 1 and 10 are therefore patentably distinct from the cited art. Claims 2-9 and 11-20 are dependent on claims 1 and 10, respectively, and are therefore patentably distinct from the cited art for the same reasons. Therefore, Applicant respectfully requests withdrawal of the rejections and reconsideration of the claims as amended

For all the foregoing reasons, Applicant asserts the claims are in condition for allowance. Favorable action on the merits of the claims is therefore earnestly solicited. If any issues remain, please contact Applicant's undersigned representative at (949) 737-2900. The Commissioner is hereby authorized to charge any additional fees that may be required to Deposit Account No. 50-2862.

Respectfully submitted,
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